

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

FABIAN MARCUS ROMERO,

Defendant and Appellant.

H040927

(Santa Clara County  
Super. Ct. Nos. C1224499 &  
C1226663)

Defendant Fabian Marcus Romero appeals from a judgment of conviction based on a no contest plea. On appeal, defendant asserts the trial court erred by imposing a three-year enhancement for a prior prison term for a violent felony pursuant to Penal Code section 667.5, subdivision (a),<sup>1</sup> based on his conviction for attempted carjacking. Defendant argues his prior conviction for attempted carjacking does not qualify as a violent felony within the meaning of section 667.5, subdivision (a), and the matter should be remanded for resentencing.<sup>2</sup>

---

<sup>1</sup> All further statutory references are to the Penal Code.

<sup>2</sup> Defendant's opening brief contains an additional argument regarding his convictions for selling stolen property. We do not address these arguments in this opinion, because we granted defendant's motion to withdraw this argument on May 4, 2015.

The Attorney General concedes that the matter must be remanded for resentencing on the ground that the trial court erred by using defendant's prior conviction for attempted carjacking to enhance his sentence in two ways: As a prior serious felony under section 667, subdivision (a), and as a prior prison term under section 667.5, subdivision (a).

#### **STATEMENT OF THE CASE**

On September 5, 2013, defendant pleaded no contest to all of the allegations in Case Nos. C1224499 and C1226663. In case No. C1224499, defendant pleaded no contest to second degree robbery (§§ 211, 212.5, subd. (b)), admitted that he committed the crime for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(c)), and was previously convicted of the strike priors of attempted carjacking and assault with a deadly weapon (§§ 667, subd. (b)-(i), 1170.12), was convicted of the prior serious felony of attempted carjacking (§ 667, subd. (a)), served a prior prison term for the violent felony of attempted carjacking (§ 667.5, subd. (a)), and served a prior prison term for inflicting corporal injury on a spouse with a prior (§ 667.5, subd. (b)).

In case No. C1226663, defendant pleaded no contest to grand theft (§§ 484, 487, subd. (a)) and three counts of selling or aiding in selling stolen property (§ 496, subd. (a)). He admitted that he was convicted of the prior strikes of attempted carjacking and assault with a deadly weapon, and that he served a prior prison term for inflicting corporal injury on a spouse, after having been convicted of a prior offense (§ 667.5, subd. (b)).

On November 19, 2013, the court struck the strike prior of assault with a deadly weapon from both cases pursuant to *People v. Superior Court (Romero)* (1996) 14 Cal.4th 497. On April 4, 2014, the court sentenced defendant to a total term of 15 years four months in prison, reflecting 14 years in prison in case No. C1224499 consecutive to one year four months in prison in case No. C1226663.

Defendant's sentence was calculated as follows: in case No. C1224499, the court imposed a total of 14 years in prison, reflecting six years as the midterm, plus five years

for the prior serious felony of attempted carjacking (§ 667, subd. (a)), and three years for the prior prison term served for attempted carjacking (§ 667.5, subd. (a)). The court struck the gang enhancement pursuant to section 186.22, subdivision (g), and struck the one-year enhancement for the prior prison term served for inflicting corporal injury on a spouse, after having been convicted of a prior offense pursuant to section 1385.

In case No. C1226663, defendant was sentenced to one year four months in prison, reflecting one third of four years, or the midterm of two years doubled, on count 1. The court imposed the same sentence on counts 2 through 4, concurrent to count 1. The court struck the three-year enhancement for defendant's prior prison term for inflicting corporal injury on a spouse, after having been convicted of a prior offense pursuant to section 1385.

#### **DISCUSSION**

We accept the Attorney General's concession, and will remand the matter for resentencing. Pursuant to *People v. Jones* (1993) 5 Cal.4th 1142, the trial court erred by using defendant's prior conviction for attempted carjacking as both a prior serious felony (§ 667, subd. (a)), and a prior prison term (§ 667.5, subd. (a)) to enhance his sentence. Because we are reversing the judgment and remanding the matter for resentencing on the ground that the court improperly used defendant's prior conviction for attempted carjacking to enhance his sentence in two ways, we decline to consider defendant's argument that attempted carjacking is not an enumerated violent felony pursuant to section 667.5, subdivision (c).

#### **DISPOSITION**

The judgment is reversed, and the matter is remanded for resentencing.

---

RUSHING, P.J.

WE CONCUR:

---

MÁRQUEZ, J.

---

GROVER, J.